JK 3125
1881
.B8
Copy 1

LIBRARY OF CONGRESS.
Chap. JK3125
1881
Shelf .B8
UNITED STATES OF AMERICA.

CENTENNIAL

OF

MASSACHUSETTS CONSTITUTION.

BY

ALEXANDER H. BULLOCK.

LIBRARY OF CONGRESS
1881
CITY OF WASHINGTON.

THE CENTENNIAL

OF THE

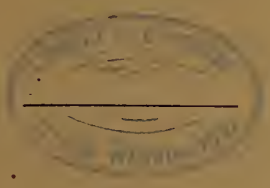
MASSACHUSETTS CONSTITUTION.

PREPARED AT THE REQUEST OF THE PRESIDENT OF THE AMERICAN ANTIQUARIAN SOCIETY, AND READ AT THE SEMI-ANNUAL MEETING OF THE SOCIETY, IN BOSTON, APRIL 27, 1881.

25.7
5-133

BY

ALEXANDER H. BULLOCK.



WORCESTER:
PRESS OF CHARLES HAMILTON.
1881.

JK3125
1881
.B8

THE CENTENNIAL OF THE MASSACHUSETTS CONSTITUTION.

THE Colony of Massachusetts had hardly secured a firm foothold here as a permanent settlement, exercising the functions of government, when the colonists began to make a demand for a formula of securities or liberties, the equivalent of which is nearly expressed by our term Constitution. The Englishman, removed to a home in Massachusetts Bay, passed at once under the elation and expansion of a conscious freeman. The records of that time reveal to us, as clearly as any history can disclose the consciousness of a generation of men two centuries and a half after their existence, that the freshly arrived immigrant felt the traditional restraints of his European life falling from him, and was consciously invested with new dignity and hope, with new resolve and power. Within four years after the coming of Winthrop the settlers became impatient that their liberties should be registered in clearly defined form and ordinance. This impatience manifested itself as early as 1634 in palpable proceedings, which aimed at having their rights reduced to the letter and form which should limit even the magistrates who had their highest confidence. Having already obtained the right of popular representation by deputies, they secured in 1635 the appointment of a commission, as we should now call it, which should "frame a body of grounds of laws, in resemblance to Magna Charta,

which should be received for fundamental laws." This commission, several times changed as to its members, finally secured in 1641 the enactment of the code of a hundred laws, called the Body of Liberties, of which a copy was discovered in the old Athenæum in Boston by Mr. Francis C. Gray about sixty years ago. This first American code of public and private securities, the Magna Charta of that day, may in a certain sense be termed the first Constitution of this Commonwealth; or rather, reading the articles in the light of all which has happened since, I should venture to call them the Massachusetts Institutes. A perusal of this code cannot fail to vindicate the claim of its author, Nathaniel Ward, minister of the town of Ipswich, to our grateful remembrance for having brought to America great benefits from his study and practice of law in England; and I am sure that every thoughtful reader of this Puritan pandect will cordially concur in the opinion, which forty years ago Mr. Gray pronounced before the Massachusetts Historical Society, that it manifests a quality of wisdom, equity and public adaptation far in advance of the time in which it was written. To this opinion I will add, that after allowance for that portion of these institutes which was derived from the Pentateuch, and which must be accepted as the reflected sentiment of a Theocracy which is scarcely appreciable in our own time, there are other parts of this constitutional breviate which bear the marks of bold and statesmanlike originality fit for the affairs of a complete modern commonwealth. That they may be regarded as having been the forecasting of the coming state, is attested by some of them having since been incorporated into our present Constitution. Although these Fundamentals were

adopted for only a term of three years, yet the more important of them passed into the volume of enduring colonial legislation, and aided largely in the gradual framing of the beneficent fabric which now overshadows us with the safety which everybody feels, but which not everybody traces to its simple and august beginning.

During the one hundred and forty-four years which intervened between the founding of the colony and the first decisive act of Gage at Salem in 1774, which heralded a new era, the people of Massachusetts continued under the government of the charters. But during the whole of this period there was a constant though varying accumulation and cohesion of the elements of a sovereign and free state. Ours was in many respects a free republic from the start, and our provincial annals abound in prophetic signs of coming independence. The spirit of this independence was never in profound sleep, from the first and singular fortifying of the harbor, five years after the advent, to the day of the first levy of arms in the next century. In many of those years kings were so deeply engrossed in home pleasures and home politics, and in many other years the puritans were so deeply engrossed in their own civil and religious strifes, that the reader of events is often diverted from observing the under-current which was steadily bearing the state towards the only ultimate result. This province was at no time without statesmen grounded in the learning of the English Constitution, and in all the progressive stages of the rising local republic their discernment was fully equal to every changing situation. In that school of trial they were practicing themselves for their purpose more rapidly than they knew, and were practicing a more profound policy

than was known by their kings. Their purpose as freemen was frequently held in reserve by a masterly suppression, and their assurance as prophets was frequently held in check by a masterly diplomacy. Under Cromwell the Massachusetts puritan moved in straight lines towards independence, under Charles restored the Massachusetts puritan was politic as a Machiavel or a Talleyrand; but under every reign he was constantly advancing in the grooves of destiny, sometimes a little tortuous and sometimes very direct, always towards his freedom. Such drift and purpose must sometime reach its end, and when a king so resolute and obstinate as George the Third sat on the throne, and a puritan so resolute and obstinate as Samuel Adams directed Massachusetts, the end could no longer be postponed.

The adoption of the Declaration of Independence in 1776 introduced in the several states new forms of government which were without precedent or example in the world. When colonial dependency was annulled and autonomy took its place in thirteen republics, a new method of formulating the will of states came into use and became henceforth distinctively The American System. Written constitutions, framed by the people for their own government, and made unalterable even by themselves save in most indubitable and solemn manner, accepted as the only source of power to all administrations and absolute criteria of security to all subjects, have now been in use here during a century and have set us apart from the other peoples of the globe. The adoption of the American plan was a logical necessity. The dissolution of dependency cast Americans upon their own capacity for government with no guidance except their

knowledge of history and their own shackled experience. They had grown up in the knowledge of the muniments of the British Constitution, but the elemental principles of that Constitution for public and private liberty lay spread over five centuries and a half since Magna Charta, had never had any existence as a code, and had neither the unity of one fixed interpretation by continuous generations, nor any sanction of immutability. Since English constitutional liberties had been in their origin concessions from the crown, given in times of exceptional popular awakening, even the repetition of the demand and concession from reign to reign had scarcely given the ease of repose to the mind of the subject. According to the authority of Professor Creasy, in his work on the English Constitution, the terms of Magna Charta itself have needed to be confirmed by kings and parliaments upwards of thirty times. Even in the present day of established construction, in which the English constitution has attained a complete solidity of crystallization, if we seek to find its rise and growth we have to read with collating care the histories of Hallam and May extending over a period of nearly five hundred years; and after all the reading we come to no such muniments as those of our own written Constitution, founded in a universally acknowledged social compact, "the whole people covenanting with each citizen and each citizen covenanting with the whole people;" so unshackled in outline, so solid in framework, so solemn in sanction, as to be beyond every fear short of revolution. The term unconstitutional as it is used in England bears a signification altogether different from its meaning in Massachusetts. "By the term unconstitutional, [says Hallam], as distinguished from the term illegal, I

mean a novelty of much importance, tending to endanger the established laws,"—a definition which scarcely reaches the incisiveness of a decree of unconstitutionality pronounced by the highest judicial tribunal of an American state. It is true that many of the constitutional guaranties which the people of this state a century ago engrafted upon their form of government had been inherited by them, and had become so sacred by tradition and use that no tribunal would ever after have been likely to deny them; but for their double assurance they resolved to re-define them, to reduce them to a system and a code, to add many things which could have had no existence under a monarchy, and to throw about them safeguards of their own creation.

This necessity for a written constitution was reënforced by another consideration. The advance in modern thought on government had at that time reached one important conclusion on this side of the water never before fully recognized on the other, nor indeed recognized there now to anything like the extent of the American opinion. I refer to the strict division of government into coördinate branches, each exclusive of the others, nowhere else expressed as in the American constitutions. There is no one feature of our governments which so clearly ensures the security of public or private rights as the setting the judicial power solemnly apart as a governing organ of the constitution, beyond the reach of the arm of the executive and legislature; and this was a stage of advancement which had not been made in a degree of perfection anywhere before the American Revolution. The men of Massachusetts saw the necessity of making this eminent consecration of the judiciary certain and enduring by a fundamental liberty

recorded in written and unmistakable words. They had seen in the parent country the ultimate decision on judicial appeal lodged in one of the houses of the legislature, and they saw no way of closing the door upon this exposure to abuse, but by a written constitution which should shut off and protect a pure and fearless judiciary against encroachment from any quarter. Englishmen themselves have learned to regard the American plan, under which each coördinate power is protected from every other power by registered constitutional language, as the conservator of every right and interest, of every class and condition; and during their excitement over the Reform Bill fifty years ago, when the upper house barely escaped being swamped by the crown, their conservative statesmen did not hesitate to acknowledge the superior safety of the written constitutions of our states.

The statesmen of Virginia have justly boasted that theirs was the first written constitution, formed by a free and sovereign state, which the world has possessed. The state convention from which this instrument emanated assembled early in May, 1776, several weeks before the subject of recommending new governments in the states was acted on by the Continental Congress at Philadelphia, and that ancient state may rightfully wear in its coronet this high historical distinction. No other state has the power, no other state has the desire, to dispute this impressive priority in the noblest group of governments of modern time. But the truth of this history is only fully completed in the statement, that nearly two years before that time Massachusetts had initiated proceedings which had the same purpose in view, and had already set up self-government over its

domain. On the seventeenth of June, 1774, the date of practical independence in Massachusetts, the last day of any other government and the first day of its own government on its own soil, the house of Assembly, in session at Salem, with its door locked against the governor, while the decree of its dissolution was read on the stairs outside, provided for a provincial house of representatives to take the place of the General Court which was never again to be convened. Massachusetts was launched, somewhat unceremoniously to be sure, but none the less certainly, the first autonomous republic in America; and Samuel Adams was the master and guide of the event. Before any counsel could come from Philadelphia, because it was before there was any Congress at Philadelphia to give counsel, he commanded the situation at Salem on that historical day, and he first in America turned the key on monarchy. The history of self government in this Commonwealth thus starts with the fact that its people for the space of a whole year were without any direction beyond that of this provincial assembly and of the committee of safety, and that all the while, without any regular executive, and in the presence of hostile arms, they maintained civil order and brought no scandal on liberty or justice. This provincial assembly, stimulated to take another step forward by the affair at Lexington and Concord of April 19th, proceeded on May 16th, 1775, under the counsel of Gen. Warren, to ask the advice of the Congress at Philadelphia upon the best method of exercising the powers of civil government; on June 9th the Congress advised that the colony, accepting the singular hypothesis that the office of Governor was to be treated as vacant, should clothe a newly-chosen Council with the

executive power "until a Governor of His Majesty's appointment would consent to govern according to its charter;" and only ten days afterwards, on June 19th, a call was made for the election of a provincial assembly; which only thirty days later, on July 19th, convened in Watertown. In their anxiety for the maintenance of the civil functions of society the people moved with a rapidity and quietness which illustrated their earnestness of purpose and their solemn sense of responsibility. This body at once elected a new set of councillors to act in the double capacity of legislative and executive administration, with James Bowdoin as their President; thus planting a provisional government upon a fiction of law which was the ultimate as yet reached by the wisdom at Philadelphia, and upon an anomalous confusion of the organs of government which was destined to continue four years longer. Although civil process and appointments were issued in the name of the king, the commission of John Adams as Chief Justice being conferred in that style, the public endured this anomaly with patience until May of 1776. On the first day of that month, now as before acting in advance of the Congress at Philadelphia, the processes and commissions of Massachusetts were ordered by its leaders to run in the name of its "government and people," in lieu of that of the king. This was two weeks before John Adams succeeded on the 15th of May in carrying through the Continental Congress his celebrated resolution for the suppression of every kind of authority of the crown and advising the several colonies to establish their own governments; which resolution itself was adopted two weeks before the question of declaring Independence came to its sublime decision, and

which he proudly named the cutting of the Gordian knot. Now for the first time our own legislative assembly took the preliminary steps for forming a State Constitution. Entering upon the subject in June, 1776, the assembly decided on the 17th day of September to advise the people to choose their deputies to the next General Court with full power to frame a Constitution; and this advice was repeated May 5th, in 1777. Although in the interim after the dissolution of this assembly the people in several public conventions, notably in the County of Worcester, and in many of their town meetings, had insisted upon the calling of a special convention solely for so grave a work as the framing of a new government, yet a majority of the representatives came together fully authorized to enter upon this great business; a joint committee of the Council and assembly agreed upon a constitution, which was approved by the two bodies February 28th, 1778, and was sent out in March for popular ratification. It is one of the omissions in our annals that the proceedings of this committee were never given to the public inspection.

But this constitution, which required the assent of two-thirds of those voting on it to secure its acceptance, received only two thousand of the twelve thousand votes which were returned; partly perhaps because of its imperfect delineation and division of government powers; in part no doubt because it was not accompanied by a Declaration of Rights, on which at that time the popular heart was strongly set; and chiefly because of the general conviction that our organic frame-work of government could properly come only from a convention chosen solely and sacredly for that one piece of work. This first form of a constitution, con-

trasted with the orderly and stately instrument afterwards framed and adopted, exhibits most glaring defects, whilst some of its incongruities reviewed in the light of the subsequent experience of a century would now fail to command respect. The Governor and Lieutenant-Governor were to have "a seat and a voice in the Senate;" the Governor was to be president of the Senate; and in the distribution of the functional powers of government "the Governor and Senate" are spoken of in a manner corresponding to our present municipal phraseology of "the mayor and aldermen," in strange mingling of the executive and legislative departments. The instrument contained no provision for an executive council, and the high power of executive pardon was lodged with the Governor, Lieutenant-Governor and Speaker of the house of representatives, or "either two of them." Senators for each district were to be chosen by a vote of the whole people of the state. All persons not of the protestant religion were made ineligible to either the executive, legislative or judicial orders of the government. The dignity and independence of the executive were very inadequately provided. It is unnecessary to pursue the subject with further detail. The vote of the people showed that they deemed the structure of this constitution an utter failure, and only one-sixth part of the ballots were given in favor of its acceptance. A remarkable demonstration in the canvass of its merits was made by a convention of many towns of the County of Essex held at Ipswich in April, 1778, which appointed a committee to report upon the true principles of government required for the public safety. At an adjourned meeting of the convention in the following month this committee reported an exhaustive treatise on the

whole subject, which became known as "the Essex Result." This argument, understood to be the production of Theophilus Parsons, afterwards the eminent Chief Justice of the Supreme Judicial Court, was marked by the intense grasp and comprehensive generalization, by the power of statement and of clearly-drawn distinctions, which in later years distinguished his published opinions, and it must have contributed essentially to the defeat of the proposed constitution. And the people of the state were still without an established government.

Mr. Charles Francis Adams has advanced the opinion "that interests had already grown up, in the period of interregnum, adverse to the establishment of any more permanent government;" and he finds color for this suggestion in the fact that when the legislature in the next year, 1779, took steps for another trial for a new government, it put to the people the composite question, first, whether it was their will to have a new form of government, and second, whether they would authorize their representatives to call a convention for the sole purpose of framing one. Nor is this suggestion by any means without extraneous support. Massachusetts was moving on its daily life under the momentum of traditional observance of law and order which had grown up under the charters, which had now been modified in practice to a degree that answered the needs of all functional routine through four years of experience; and the conservative force of popular inertia, even amid public crises, is attested by the fact that a very large proportion of the citizens made no return of any action whatever upon the preliminary questions in both attempts for a constitution. Rhode Island lived on under its charter

sixty years after the resolution of the Continental Congress had suppressed it, and it remained a mooted question in Connecticut until the year 1818 whether its people had any constitution or not. But the return of the votes upon the question referred to them showed that a majority of our people favored the call of a convention, and on the 17th day of June, 1779, precepts were sent out for the election of delegates, who should assemble in the following September. Accidentally the conjuncture of dates links the beginning and the end of this high enterprise with a day forever set apart in the Western world by the opening battle of the Revolution. On the 17th day of June, 1774, the representatives of the state took at Salem the first step for self-government; on the same day in the next year every retreat was cut off by bloodshed at Charlestown; and on the same day five years later their successors ordered the completion of the work. As the constitution now to be created did not go into effect until October, 1780, it appears that from the eventful day at Salem more than six years were to elapse before the commonwealth should come into possession of a genuine government. It is a tribute which history will ever pay to the heroic energies of that generation of men, to their capacity for government, to their innate reverence for law and authority, to their strong and enduring sense of nationality, to their love of liberty moderated by their love of justice, that they carried on a free republic through all that period by their unaided self-denial and self-control; that, rather than act hastily in a matter so grave to themselves and their posterity, they endured for six years the uncertainties and inconsistencies of an illusive and baseless fabric of government; that they deemed the benefits of a

perfect constitution within their own borders might come only too soon, if attained by abating one jot or tittle of devotion and sacrifice to the common cause of all the states.

The convention which framed the constitution under which we now live assembled in the meeting-house in Cambridge September 1st, 1779, and after seven days took a recess till October 28th, having first committed the task of preparation to a committee of thirty; it re-assembled on the 28th of October, and on the 11th of November took a further recess till January 5th, 1780; on that day it met in the old state house in Boston, but by reason of the bad travelling over the state continued without an efficient quorum till the 27th; on which day the labor was resumed and went on without further interruption until it was completed on the 2d day of March. Of this body, which comprised, as I make out from the journal, three hundred and twelve delegates, James Bowdoin was elected President. Of the exalted character of this assembly no one can hesitate to concur in the opinion expressed by Mr. Robert C. Winthrop in his admirable address on the services of Gov. Bowdoin, that it contained "as great a number of men of learning, talents and patriotism as had ever been convened here at any earlier period;" and I venture to add, that it has not since been equalled by any public body in the state, unless possibly by the next convention which met in 1820. John Adams, Samuel Adams, Hancock, Lowell, Parsons, Cabot, Gorham, Sullivan, Lincoln, Paine, Cushing, Strong, are but a few of the eminent names which appear on its roll. The journal of its proceedings is exceedingly unmethodical and unsatisfactory, and by reason of the lack of reporters at that time we have scarcely any knowledge

of the debates. The committee of thirty, to whom was referred the work of preparing a plan and form of government, intrusted this task to a sub-committee consisting of Bowdoin and the two Adamses; who in turn committed the responsible labor to John Adams alone. His draught of the frame-work was substantially as a whole adopted by the sub-committee, and afterwards by the general committee slightly altered was propounded to the convention. The draught of Mr. Adams, compared with the form in which the constitution was finally adopted, appears to have received several amendments by the convention, but the result of their labors was chiefly as he had blocked it out, and by every rightful title he must be declared the father of our constitution. Judge Lowell said in his eulogy on Bowdoin, that "it was owing to the hints which he occasionally gave, and the part which he took with the committee, that some of the most admired sections in the constitution appeared;" but in comparing John Adams's draught with the ultimate result one cannot easily discover any sufficient supply from other sources to derogate from his title of chief authorship. And we owe it to the truth of history to say, that whilst the galaxy of names already mentioned warrants the belief that the absence of any one of these delegates could not have endangered the prospect of a model constitutional government in Massachusetts, the chieftainship in that creative work must always be assigned to John Adams.

And if he had left no other claim to the gratitude of the commonwealth, this alone would complete his title. As constitutionalist and publicist all other men of his day came at long interval behind him. Madison and Hamilton were a development of the ten years which followed the full

manifestation of his powers. Beyond all his associates in mastery of the whole subject of government, grasping and applying the lessons of historical studies with a prehensile power at that time unprecedented on this continent, and adding to them the original conceptions of a mind of the highest order, he proved of all his contemporaries fittest for constitutional architecture. Having discerned five years before, in advance of everybody, the solution of independence in directing the colonies to establish local governments, he became *doctrinaire* to the delegates at Philadelphia. In the confusion and chaos of thought relating to these subjects which brooded over their minds his counsel was sought by delegates from North Carolina, from Virginia, from New Jersey, to each of whose delegations he furnished formulas of state government; and when he came to the front in the preparation of a constitution for his own state, his mind was already stored for the emergency. His share in framing our own government, and his subsequent writings in defence of the general system adopted by the American states, in refutation of the theories of M. Turgot, this defence being published just in time to bear upon the question of the adoption of the Constitution of the United States, furnish sufficient excuse, if indeed excuse were needed, for his boastful declaration, found in the Warren correspondence recently published by the Historical Society: "I made a constitution for Massachusetts, which finally made the constitution of the United States."

Under his direction the convention made a Declaration of Rights to precede the frame-work, almost wholly the work of his hand with the exception of the third article, which he did not attempt to perfect. These are the axioms which

are to give direction in future interpretations. Of the eleven original states which made new constitutions,—for Rhode Island and Connecticut continued under their charters, the former until 1842, and the latter until 1818,—six adopted these Bills of Rights, and five left them out. That these declarations of general rights and liberties, most carefully and solemnly stated, and called Bills of Rights, are not to be regarded as exclusively suggestive of that period of transition from the old dispensation to the new, is shown by the fact that of the twenty-five new states admitted since the Revolution twenty-three have adopted these formularies; and of the whole present number of thirty-eight states there are still but five which have not accompanied their constitutions with something like a Bill of Rights. Upon this subject the people of Massachusetts were peculiarly sensitive, and the want of a Bill of Rights is believed to have had a leading influence in causing the rejection of the first proposed constitution. Our ancestors deemed it of first importance to make, with every solemnity, declaration of certain fixed principles of reason adapted to the sphere of government, certain abstract theories of natural or civil rights of man under the social compact, as safeguards necessary to immutable liberty. Other sections of the written instrument, other provisions of law, are the outworks; these are the citadel. Secret approaches by violence, or corruption, or other degeneracy, may span the moat and scale the outer walls of government, but the life of constitutional Liberty is HERE and will "not but by annihilating die." The conclusion of disputed principles, derived out of the usurpations and resistances of past centuries, is here registered in a single paragraph. It is but a small body of

words, mere "glittering generalities," but every word glitters as a flaming sword of warning and of ward to the generations. Good words are great things with a free people. Seven words, according to Parsons and Shaw and Gray, abolished slavery in Massachusetts. "These three words, [said Chatham to the lords], *nullus liber homo*, are worth all the classics." The journal of the convention of 1780, barren as it is of anything dramatic, shows that the masters of the period resolved to follow after the Commons of 1688, who gave the word of halt to the Lords in settling the crown upon a new dynasty until a bill of fundamental liberties had first been assented to. And the earliest motion of business in our own convention related to the Declaration.

In all these formulas of rights adopted by the several states there is a general resemblance of substance and phraseology, but it by no means follows that the first in time was literally progenitor of the common affinity of thought which pervaded them all. Undoubtedly the Bill of Rights of Virginia, which was the first promulgated, was in several particulars largely copied into the others, and by its priority in time, as well as by its excellence for a model, it has laid three generations under tribute of admiration. It was almost solely the production of George Mason, one of the sainted heroes in the history of American constitutional government. Four times since that day Virginia has adopted new constitutions, but, excepting the addition of two or three articles made necessary in 1870 as results of the civil war, the original work of Mason has stood and now stands, after the lapse of one hundred and five years, as it came from his hands. The Massachusetts Declaration

is more extended and enunciates more in detail the investiture of the liberties of the citizen subject; and though I must unavoidably be suspected of bias I am free to express the opinion that, as a whole, it is superior to every other similar form in existence, for its comprehensive projecting of the eclectic lessons of history over the future of a new commonwealth, for its repeated inculcation of the duties of religion and education as the primary agencies of civilized states, and for its own simple and solid literature. With the exception of the third article it is the work of Mr. Adams, though in the convention it took on considerable changes in the grouping and the phraseology. It would be difficult to find among the English landmarks of right, in Magna Charta, in the Petition of Right, in the Habeas Corpus, in the Bill of Rights of 1688, any public or private security which, though here modified to fit the modern situation, is not as well stated in this all-comprising Declaration. In the annals of English legislation we often come upon the historian's phrase—"encroachment upon constitutional principles"—whilst, to learn what the principle is that was encroached upon, one must be well read in five centuries of kings and parliaments, and accept perhaps at last an interpretation from varying schools; but in the simple and elemental aphorisms of the Massachusetts Bill of Rights there is for many of the questions of constitutional encroachment the assurance of speedy and indisputable solution. In the eleventh and twelfth articles, protecting personal liberty and property, which Mr. Hallam sums up as covering the two main rights of civil society, we have repeated the thirty-ninth and fortieth articles of the fundamentals of Magna Charta with more circumstantial defini-

tion, but not without some loss of the Gothic strength and grandeur of those ever-memorable sections. The thirtieth and concluding article, defining the separation and protection of each one of the three departments of government from the other two, which was reduced to its present form by changing Mr. Adams's grouping, has not its superior in the terminology of modern constitutions; and its success in expressing the leading thought he aimed to impress upon our constitution, is one of the choice felicities of the whole body of the Declaration. Mr. Rufus Choate speaking of this clause once said: "I never read without a thrill of sublime emotion the concluding words of the Bill of Rights,—'to the end this may be a government of laws, and not of men.'" With the change of only a single article the entire thirty sections have stood the test of a hundred years, and they still challenge the same tender observance and care from the present generation, which Lord Coke claimed for the best chapter of Magna Charta: "As the gold refiner will not out of the dust, shreds, or shreds of gold, let pass the least crumb, in respect of the excellency of the metal, so ought not the reader to pass any syllable of this law, in respect of the excellency of the matter."

There are some half-dozen of these articles, promulgating the supreme and fundamental principles which form the ground-work of free government, which are substantially copies from the Declarations of Virginia and Pennsylvania. But since Pennsylvania copied after Virginia, to the last mentioned must be accorded the historical honors. John Adams was perfectly familiar with every circumstance and detail of the history of the proceedings in both of those

states. He himself said that the Bill of Rights of Pennsylvania was taken almost verbatim from that of Virginia, which was made and published several weeks before; and in conversation with M. Marbois in June, 1779, just before he came home to find himself elected a delegate to our convention, he gave the names of the four men who framed the Pennsylvania Declaration. Much has been said and written in our local historical circles about the authorship of the Massachusetts famous first article, "All men are born free and equal," &c., but it would seem the product of all these inquiries and speculations must lie at last in the simple conclusion, that this section has come to us in the sole personal draught of Mr. Adams, and that he in turn had before him the same in the original as it came from Virginia. This is one of the conclusions established by Mr. Charles Deane in a recent paper published by the Historical Society. The record ought to be conclusive. But it would be quite unphilosophical to suppose that the primordial conception of the idea of the congenital freedom and equality of men belongs exclusively to any one of these forefathers. Not to George Mason, nor to Thomas Jefferson, nor to John Adams, do we owe an inheritance of this thought. It was in the air of that day. It is said there are climates of opinion; and I may add there are epidemics of phrase. From time far back there have been periods of the public consciousness of the rights of man, and it would be difficult to find a time when human nature has not been conscious of its rights; and these rights have found expression in one epoch only to be paraphrased after long interval in a following epoch. The central thought of the twelfth article of the Massachusetts Bill of Rights, expressed by

Mr. Adams in 1779, may be seen as well expressed by Nathaniel Ward in the first article of the Body of Liberties in 1641, and it was set forth with a strength superior to both in the thirty-ninth article of Magna Charta of 1215. These are not inherited rights; they come to us from our Creator. As to concrete form they may be traced to an origin among the customs of the English people and the English barons, and as for their phraseology in expression it is a matter rather of curiosity than of utility whether we take rest from our inquiries in Locke or Sidney, in Filmer or Bellarmine.

There is a curious coincidence in the conduct of George Mason and John Adams of their respective Bills of Rights relating to the subject of religion, and in the public results which flowed from that conduct. Mr. Mason reported, in his sixteenth article, toleration for all forms of religion, when Episcopacy was, so to speak, the state religion of Virginia. The youthful James Madison, then making the first step in a brilliant and beneficent career, contested the language and obtained an amendment predicated on the natural right of all men to the free exercise of religion, excluding the idea of toleration. This action resulted in the speedy legislation which put an end to the advantage of any one sect of christians over another, and left the whole domain of religious thought in Virginia without a trace of compulsion or restraint. Mr. Adams assented to a compulsory support of religious worship, reported in the third article of our Declaration, when Congregationalism was, so to speak, the state religion of Massachusetts, though he disclaimed personal responsibility for the article; and this article, subsequently made even more narrow and stringent

by the convention, enforced a religious compulsion upon the people of Massachusetts which it took half a century afterwards to repeal.

Following the Declaration of Rights came the plan or frame of government. On this field Mr. Adams had the opportunity to apply, in clear and enduring formulary, his matured conceptions of a government fit for a free republic, which he summarized in the provision for three organs of governing power, a legislature, an executive, and a judiciary. Five years earlier, in his conferences with public men at Philadelphia, he had met with a quite common preference for one sole legislative assembly, which should absorb all functions of government, itself legislating and itself also selecting the executive and judicial agencies. This principle was adopted by Pennsylvania in its constitution of 1776, which remained in force till 1790, after the constitution of the United States had been ratified; and a similar form of government was created by Georgia in 1777 and continued until 1789. Though no other of the thirteen states accepted this theory, it has been made evident that in 1775 and 1776 it had a strong support in high quarters. Dr. Franklin favored it, and according to the authority of Mr. Adams, his colleagues, Cushing, Paine and Samuel Adams, favored it, though no evidence appears that they adhered to such opinion when called to act in the convention of 1780. He distinctly states that, when the subject of recommending the setting up of state governments was before Congress in 1775, it seemed to him most natural for that body to agree upon a form of state government and send it out to all the states for their adoption; but, he says, "I dared not make such a motion because I knew that

every one of my friends, and all of those who were most zealous for assuming governments, had at that time no idea of any other government but a contemptible legislature in one assembly, with committees for executive magistrates and judges." This was very properly termed an unbalanced government, and such a theory, whether fresh from France or acclimated here, he opposed with great vigor in his reply to the disquisitions of M. Turgot. He would set up the three bulwarks of the English Constitution, king, lords, and commons, modified in the form of governor, assembly, and senate, adding an isolated and absolutely independent judiciary, without the British imperfection which then made the upper house a depositary of judicial appeal. As far back as January, 1776, five months before the action of Virginia, six months before the action of Pennsylvania, and before any one of the colonies had taken up the subject for deliberation, when invited by the colonial legislature of North Carolina to give them his views on government, he unfolded his system in a letter to John Penn in language which he afterwards repeated in framing the constitution of Massachusetts; the same separation of the executive from the legislature, the same balance of dual legislative houses, the same great barriers thrown up around the judiciary. The legal literature of this country does not furnish a more impressive statement of the necessity of an elevated judicial organ in the government, of the method for obtaining it, and of the guards which should surround and protect it, than the following passage which I quote at length from this letter as a motto for the people of the state in all time to come:

"The stability of government, in all its branches, the morals of the people, and every other blessing of society

and social institutions, depend so much upon an able and impartial administration of justice, that the judicial power should be separated from the legislative and executive, and independent upon both; the judges should be men of experience in the laws, of exemplary morals, invincible patience, unruffled calmness, and indefatigable application; their minds should not be distracted with complicated, jarring interests; they should not be dependent on any man or body of men; they should lean to none, be subservient to none, nor more complaisant to one than another. To this end, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law."

It is not singular that North Carolina, to which state these sentiments were addressed, in its first constitution, in 1776, ordered the appointment of its higher judges to be made during good behavior, and that this provision continued undisturbed through ninety-two years, down to the convention of 1868, which convened under a call issued by a Major-General of the army of the United States. It is not singular that these sentiments were accepted in a similar provision of the first constitutions of nine of the eleven states which framed new governments, though many of them have since taken a wide departure from the principle. And least of all is it singular that the same sentiments were registered in the organic law of our own commonwealth, which has enjoyed the fruitage of them through a whole century. The philosophy of the master was first directed to this subject when the British parliament provided that the salaries of the colonial judges of Massachusetts might be paid by the king, and he then aroused the

attention of the colony to scent the first approach of encroachment upon the independence of the judiciary.

The frame-work of the constitution as it came from the hands of the committee of thirty underwent but few changes in the substance. Mr. Adams advocated investing the executive with the power of an absolute and unalterable negative upon the laws, which was changed to a qualified veto by the convention. Of the eleven state constitutions originally adopted, Massachusetts alone accepted this doctrine in its modern form; New York lodging the power in a joint council of the Governor, Chancellor and two Supreme Judges, South Carolina sanctioning it for but two years, while all the other states refused admittance to the principle. Mr. Adams, having been called away from the convention upon his mission abroad, was not in attendance when his form of absolute executive power of veto was changed to the qualified form, but he wrote from Amsterdam on the second of October, 1780, that the Massachusetts constitution, then publishing in the public papers of Europe, was received with general favor, and that this particular provision met with European approval and received also his own assent. The same measure of the veto power was afterwards incorporated into the constitution of the United States, and though its exercise in periods of party excitement has been frequently assailed, and the principle itself has been threatened with repeal, it has made its way into most of the state governments and may now be regarded as a part of the American system. Whilst this state was almost alone in its original adoption, the example has been followed by other states, until now only three of the old thirteen are without it, and of the whole number of states

thirty have incorporated it in their governments, leaving but eight that disown it. For illustrating the desire of our ancestors for a government clothing the governor with full and independent powers, I may mention that in many of the towns the people voted against accepting those sections which seemed to them deficient in the strong executive prerogatives necessary for the time. The appointment of militia officers, lodged by the committee's report in the Executive, was by the convention changed to election by the companies or otherwise, and though deemed an important change by the author this has caused no trouble in practical operation. The material alterations from the committee's report were so few and inconsiderable that I will not follow out the topic.

In filling up the outline of the framework to attain the comprehensive purpose of three grand, distinctive, and coördinate organs of governing sovereignty, balancing and checking each other, yet protecting and serving each other, the analogies of the English system and the colonial customs and laws of a century and a half, were retained and modified by the access of new ideas. The king, the lords and commons, became our Governor, Senate and House of Representatives, modified by our situation, but not essentially changed in elementary principles. Great Britain has been termed a republic with a permanent executive, of which last feature our system was left clear by universal consent. The British judicial life tenure, and the removal of judges by address, were retained as they had come from William and Mary. The confusion of legislative, executive and judicial functions involved in the lord chancellor being a politician of the cabinet, and in the lords being a court of

appeal, were wisely rejected from our system; the Governor's council bore analogy to the privy council of England, but was freed at once from the incompatibilities which had grown up under the charter by which executive and legislative prerogatives were illogically mingled; the expression of all legislative power under the term of "the General Court" was old as Winthrop's administration under the charter; the choice of a house of representatives was prescriptive from the earliest days of the colony in 1632, when the levy of taxes by the magistrates led to resistance; the Senate came from the ancient Assistants, being now stripped of executive and judicial authority; the check of the two houses upon each other dates backward to the civil strife which arose from the impounding of the colonial stray; the right of town representation in the assembly had its origin in that early time when but eight towns lay about Boston, as a crescent filling with the destiny of the future commonwealth; the two sessions of the general court were descended from the year 1636; the requirement of local residence of the representative came of the conduct of some recusant Bostonians who, in Phipps's government in 1694, held seats for country towns, after the manner of the British parliament, to be rid of whom the Governor's party passed the resident act, now become the general practice of America; the restriction of suffrage was an English and colonial inheritance; compulsory taxation for compulsory religious worship lingered longest and last of the relics of the puritan period, in which the idea of a perfect church and the idea of a perfect commonwealth were inseparable. I will not pursue the thought of the sources of derivative supply to the constitution, since I

shall have to touch upon some of them in speaking of the changes which the century has made in this venerable instrument; but one subject, to which was assigned pre-eminent importance, cannot be passed over by any citizen who seeks to find in government one of the chief fountains of public virtue and stability.

The second section of chapter fifth, relating to "the encouragement of literature, &c.," is a distinguishing feature of the Massachusetts constitution. The earlier provisions in the governments of other states for education were meagre and unworthy. In most of them there was no injunction whatever relating to this subject, and in the few which noticed the matter at all, with a single exception, the only inculcation of the kind was degraded by the remarkable precaution of requiring "instruction of youth at low prices," a phrase used in at least three of these constitutions. The treatment given by the following section to this duty of government raises the subject to a plane of elevation fitly occupied by a state which established a university and a system of public schools in the infancy of its settlement. It has stood through a century without the change of a syllable, and it deserves to be cited at length at this starting point of the second century under the constitution:

"Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislators and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the Univer-

sity at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country: to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections and generous sentiments among the people."

The incorporation into the constitution of this concise and unique summary of the higher obligations of government, covering the whole domain of general and special education, of ethical and social sentiment, of all the humanities and benignities necessary to the best attainable social condition, was many steps in advance of every constitutional provision hitherto known, and was original and without a precedent. This episode in constitutional precepts at once made a deep impression upon the public mind. In their answer to the first message of Gov. Hancock the two houses of the legislature quoted largely from this now celebrated section and gave assurance, for themselves and their successors, of a faithful practice of the precepts. I need not say how truly legislation has followed this organic instruction, in grants from the public domain and from the treasury to colleges, academies, and the free schools through three generations; in developing the capacity of the soil; in building up a system of public charities and reformatories of which the outlines for models are visited from afar; nor can I fail in my observation to trace back to this source of inspiration somewhat of the endurance, patience and encouragement which has sustained a Howe, a Mann, a Sears,

all our high workmen and benefactors in the interests of philanthropy and education. The unfolding of that narrative would be too large for the present occasion. Mr. Charles Francis Adams, in his fourth volume of the works of his ancestor, has made public the curious private history of this epitome of the moral duties of government. The author was in Europe when this section was voted on by the convention, and he felt apprehensive lest the injunction to cultivate "good humor" among the people might be struck out by the delegates. It happened singularly enough that this section was copied into the constitution of New Hampshire, adopted in 1784, and again in its frame of government of 1792, where it now stands, in each instance with the "good humor" left out. The author was also solicitous lest the "natural history" might be rejected by the convention. His own amusing account of the origin of this phrase of constitutional duty, traceable to the interest he took in a certain collection of American birds and insects he visited at Norwalk, Connecticut, on his journeys to and from the Continental Congress, and afterwards in similar collections in Paris, rises to the height of forecast and prophecy when considered with the illustrations of our subsequent history. The collection at Norwalk was suggestive of results which he probably then little apprehended, for in carrying out this provision of the constitution Massachusetts has passed beyond all other American states in developing this department of "natural history." To illustrate this I need only mention, among the works published under authority of the legislature, the reports on the fishes, reptiles and birds of Massachusetts, the first two written by Dr. Storer, and the last by W. B. O. Peabody; the reports

on our herbaceous plants and quadrupeds, the former by Chester Dewey, the latter by Ebenezer Emmons; the report on insects injurious to vegetation by Dr. Harris; the report on our invertebrata by Gould and Binney; the great work of geological survey by Hitchcock; a report on the trees and shrubs natural to our forests, by George B. Emerson; the munificent endowments by the state of the Society of Natural History and the Institute of Technology; and last, but by no means least, its generous contribution to the broad foundation and subsequent support of the Museum of Comparative Zoölogy at Cambridge, in which the commonwealth may be said to have entered into partnership of fame with the illustrious scientist whose name will forever be associated with the institution.

On the second of March, 1780, the finishing touches having been put to the constitution, it was finally adopted by the convention and ordered to be submitted to the people for their judgment, and the delegates adjourned to meet in the Brattle street meeting-house on the seventh of June, to ascertain and declare the result. Although the instrument made the suffrage dependent on a property qualification in the future elections of state officers, yet it had been provided that in the vote upon the adoption of the constitution itself all free male inhabitants, twenty-one years old, might cast their ballot. Upon re-assembling and counting the votes upon all the propositions the delegates declared the entire constitution to have been adopted. The form of government of Massachusetts, under which its present population, rapidly nearing two million souls, enjoy a degree of comfort and contentment not surpasssd by the same number elsewhere on the globe, was "ordained by the

people"—using the language of John Quincy Adams—"that is to say, by more than two-thirds of about fifteen thousand persons who voted upon it, out of a population of three hundred and fifty thousand, or one vote for every thirty-five souls." On the twenty-fifth day of October, the first elected chief magistrate, Governor Hancock, took the oath of office in the presence of the two houses of the legislature in the old state house, proclamation being made from the balcony by the Secretary and repeated by the Sheriff of Suffolk; and we are assured that "joy was diffused through the countenances of the citizens," that three companies paraded State street, that volleys were fired, and salvos of cannon from the castle and Fort Hill and on board the shipping in the harbor. At the services which followed in the "old brick meeting-house" Dr. Cooper preached a sermon from Jeremiah: "And their congregation shall be established before me; and their nobles shall be of themselves; and their Governor shall proceed from the midst of them." After which the executive and the members of the two houses were escorted to Faneuil Hall, in which a feast with thirteen toasts completed the simple and frugal ceremonies of inaugurating a new government and a new age for the commonwealth of Massachusetts.

During the century which has since elapsed the three branches of the government and the people themselves have in the main acted in good faith towards their form of government, and the steadiness and intelligence which have marked these mutual relations reflects equal honor upon the wise provisions of the constitution and upon the character of the commonwealth, which has thus far measured to it the whole duration of its civil life. There has been no

appreciable abandoning or dropping below the criterion established by the founders, and now entering the second century it is permitted us to say that the original spirit of the declaration and frame-work has constantly inspired the three practical functions of its legislation, interpretation and execution. Very early after this government went into operation an occasion arose to test the fidelity of its administration to the Declaration of Rights. Under the supreme clause of the first article of the Bill of Rights slavery was abolished on the first opportunity. There has been at different times much inquiry in relation to the share this first article bore in the decision of the case in Worcester County which, in 1783, put an end to slavery in this commonwealth. On the one side it has been said that the words "all men are born free and equal," were one of the phrases of the period, having no more relation to slavery in Massachusetts than the same language bore to slavery in Virginia, whose bill of rights first introduced it there. And singularly it occurs that this hypothesis receives support from a letter upon the subject of slavery, written by John Adams himself to Dr. Belknap, March 21, 1795, recently published in the Belknap Papers by the Historical Society, in which the father of the constitution says of slavery: — "It is a subject to which I have never given any particular attention." There being no judicial reports of the time in which the Worcester case was decided, the question has been held to some extent open as to the direct and factual bearing this first article may have had upon that decision. Chief Justice Parsons, himself a member of the constitutional convention, declared in 1808, that "in the first action involving the right of the master, which came before

the Supreme Court after the establishment of the constitution, the judges declared that by virtue of the first article of the declaration of rights slavery in this state was no more." Chief Justice Shaw, in a subsequent case, seemed to doubt how far the adoption of the English opinion in Somerset's case, and the first article of our declaration, may have respectively shared in the decision referred to. But I think great weight is due to the suggestion of the present learned Chief Justice Gray, contained in a paper recently presented to the Historical Society, reminding us that Chief Justice Cushing and Associate Justices Sargeant, Sewall, Sullivan and Sumner, sitting in the case, and Lincoln and Strong of counsel, and Paine for the government, were all members of the convention of 1780, which adopted, and all but three members of the committee of thirty which reported, this article. It appears to me, therefore, that however difficult it may be to determine how far the intention of the framers of the article related to this particular question, the weight of reason and authority is decisively in favor of the conclusion that the judges decreed the abolition of slavery in Massachusetts as one of the effects of the Bill of Rights. Judicial interpretation of the constitutional effect of an article must be final, though the field is never closed to archæological curiosity as to the intention of its framers. And whilst the court may have justly given to this article an interpretation lying beyond the thought of its framers, so it is still competent for the curious searcher to maintain with Dr. Belknap that it was public opinion which abolished slavery in Massachusetts.

The sense of constitutional responsibility of administration was soon brought under the most severe ordeal of our

history in the Shays rebellion, which occurred in 1786 and 1787. Both the beginning and the suppression of this memorable revolt may, in one sense, be ascribed to the lofty integrity of the early magistrates and their resolve to hold the government and the people in full accord with the standard of the framers. The discontent which ended in arms grew up out of the exhaustion of finance and hope, public and private, and out of the vast debt, state and national, which were consequent upon the war; and it combined all those elements of popular sympathy which spring from a depreciated currency, from wide-spread poverty and despair. It has seemed to me quite likely that a timid, hesitating policy on the part of the administration, a little lowering of the constitutional tone, a little yielding and weakness and false promise, might have put off perhaps indefinitely the shock. But the wise constitutionalists of that day saw that weakness in such a crisis would lead to fatal degeneracy. At a time when depression was at its worst, in 1785, Governor Bowdoin, who had presided over the constitutional convention and borne a responsible share in its great work, on taking the chair of state uttered no uncertain sound, but insisted upon such measures of taxation as should maintain unimpaired the public credit. In his address upon the life of this magistrate Mr. Winthrop has not too strongly illustrated the service he rendered by impressing on the legislature and the people the benefits of keeping faith with the constitution by practicing the highest public morals in the darkest period. The same spirit spread to the other functionaries of administration. There is no passage in the annals of the state more dramatic and sublime than those which have recorded the firmness of the judges in that time

of threatened anarchy, in which a Justice, who had served with honor under a high commission in the war of the nation, now crowned that distinction by upholding the constitution and laws in the presence of armed insurgents. After the interval of nearly a century it behooves us to recall with gratitude the conduct of these men in giving to the first operations of the government a character which has not been lost in the lapse of years. Their determination, their tone and temper, passed into the next era, and though they personally suffered from temporary disparagement and obloquy, the force of their example survived to the next generation and even to our own time. The commonwealth which under Bowdoin in 1786–7, in behalf of a public credit which should be perpetual, was reduced to the necessity of borrowing money of citizens of Boston to enable it to defend the constitution against open insurrection, afterwards still proved its steadfastness to that early lesson, when, seventy-seven years later, in the midst of flagrant national war, it paid its principal and interest in gold, whilst depreciation reigned in many other quarters supreme. The example of good faith to the constitution, taught by the fathers of the government, has survived the century.

The convention of 1780 provided that after the expiration of fifteen years, in 1795, it should be submitted to the people to say whether they desired to call another convention for revising the form of government, and that if two-thirds of those voting on the question should respond in the affirmative, such convention should be chosen and convened. Acting in conformity to this provision the people decided in 1795 against the proposition, and through a period of forty years from its establishment the constitution remained

without any alteration and without any provision for its future revision. In 1820, by reason of the district of Maine having been set off as an independent state, a constitutional convention was duly ordered by the legislature and the people, and assembled at the state house on the fifteenth of November. This was one of the most celebrated bodies of men which has ever assembled in this commonwealth, alike for the standing of the delegates and the ability and decorum of the debates. The list of its members comprised such names as John Adams and Daniel Webster, Story and Parker, Shaw and Wilde, Lincoln and Hoar, Jackson and Prescott, Quincy and Blake, Savage and Hubbard, Saltonstall and Hale, and many others then or afterwards eminent in the state and nation. The journal of this convention is among the things lost, and the commonwealth will ever be indebted to Mr. Nathan Hale for a complete record of its proceedings and discussions, made up at the time, comprised in a volume of nearly seven hundred pages of inestimable value. Mr. Adams was chosen President but in consequence of the infirmities of age, he being then in his eighty-sixth year, he declined the position, and Chief Justice Parker was elected to the office. This convention continued in session until the ninth of January. In perusing the report of these remarkable discussions one can scarcely fail to observe, that if supremacy or superiority should be assigned to any one among so many civil masters, the convention itself appears from time to time to have set that distinction upon Mr. Webster. He was then thirty-eight years old, and then for the first time he came foremost to the front in Massachusetts. It was during the sessions of this body that he pronounced his address at Plymouth

which placed him before all others for a kind of eloquence which bears within itself the assurance of durability. One other convention assembled in 1853 to consider amendments of the constitution, of which the proceedings and discussions were reported in three immense volumes, but as the result of its deliberations was altogether rejected by the people it does not come properly under the survey of this paper. Any careful reader of the debates of these two public bodies of 1820 and 1853, will readily perceive that in the former it appears to have been difficult to induce the members to accept any change in the organic law, whilst in the latter it appears to have been difficult to prevent the acceptance of any alteration. The one deliberated at a time in which no party strife existed, whilst the other was itself in some degree the outgrowth of party strife, and its deliberations reflected strongly the party politics of the day.

In the last sixty years twenty-seven amendments have been incorporated into the constitution, many of which may be grouped together in this paper for simplicity and brevity of statement. Several of these require only mention without comment. Such are the following, numbering them in the order of their adoption: *First*, a bill or resolve, if not signed by the Governor nor returned with his veto, is not to become a law if the legislature adjourn within five days after the same has been laid before him; *second*, the legislature is empowered to constitute city governments in towns having twelve thousand inhabitants; *fourth*, the appointment of notaries public is transferred from the legislature to the governor; *fifth*, minors enrolled in the militia are clothed with the right to vote in election of company officers; *eighth*, certain officers of the state and of the

United States are excluded from executive and legislative office in this commonwealth; *twenty-seventh*, instructors of Harvard College are made eligible to the legislature; the *twenty-third*, limiting the enfranchisement of certain naturalized persons of foreign birth, is annulled by the *twenty-sixth*. These eight articles have failed to impress the public mind as much affecting any grave principles of the government. Articles *sixth* and *seventh* greatly reduce and simplify the oath of allegiance formerly taken by civil and military officers of the state, and rescind the declaration originally required of the executive and legislative officers of their belief in the Christian religion. The remaining articles of amendment bear a more important and appreciable relation to the original frame of the constitution.

The *third* amendment framed by the convention of 1820, and the *twentieth* adopted in 1857, made a radical change in the qualifications for voting at elections. The original constitution required on the part of the voter a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds. This restriction of the suffrage to the possession of property was in some measure an inheritance of the people of this country, though greatly reduced from the extent prevailing in England, and in their original constitutions I believe all the states except three had similar requirements of freehold or other property. This limitation continued in Massachusetts forty years, and in the social condition of that period it worked no especial hardship. There were here a yeomanry at that time, and a spirit of simplicity and contentment. But the change of industries and activities incident to the advance of a more commercial age made the

restriction difficult of application, and it was stated in the convention of 1820 that it had in practice become to some extent a farce and a mockery not conducive to public honesty. Accordingly in conformity to the whole drift of our time suffrage was thrown open to all male inhabitants of twenty-one years, by whom or for whom a state or county tax has been paid within two years in the state, having resided in the state one year and in the town six months, paupers and persons under guardianship excepted. The other change in the qualification for voting was made by the *twentieth* amendment in 1859, which excludes from the right of suffrage and of election to office every person who is not able to read the constitution of the state in the English language and to write his name. Thus it was the purpose of the one amendment to enlarge suffrage as to the possession of property qualification, and of the other amendment to bring it under a new restriction as to the possession of intelligence. This last article has now been in existence more than twenty years, and whatever doubts may be entertained on account of its limited and artificial method of application, it seems to be regarded as the settled policy of the state.

These restrictions of the right of suffrage are frequently criticised in party discussions in the Congress of the United States, but rarely with an intelligent understanding of their limited effects in practice, and still more rarely in a spirit of justice towards the motive and purpose which induced their adoption. But more strange still are the strictures sometimes published by theoretical writers here at home in relation to the great reduction which has been made in the property qualification. It has been spoken of by pessimist

writers as equivalent to universal suffrage, and our system of popular elections under this rule has been pronounced a failure. And this is said in Massachusetts at a time in which no man of observation and candor can fail to perceive that from its legislation and from its judicature the spirit of intelligent reform and progress, of equity and justice, of liberty regulated by law and law tempered by liberty, is reflected in at least as clear and broad light as at any former period; at a time in which, as we believe, all the characteristics of an advanced civilized state, so happily grouped in John Adams's memorable Fifth Chapter of seventeen hundred and eighty, are here more generally and securely enjoyed than in any other quarter.

There is a group of ten articles of amendment, adopted by the people at different times, of which some were afterwards annulled by the adoption of others, all of which may be briefly stated by their subjects, which are nearly related. These articles are the *tenth*, *twelfth*, *thirteenth*, *fifteenth*, *sixteenth*, *seventeenth*, *twenty-first*, *twenty-second*, *twenty-fourth*, and *twenty-fifth*, and it is only necessary to state the effect of them. 1. They have changed the political year from May to January, and have established one annual session of the legislature instead of two, and have transferred the time of the state election to the month of November. 2. They have fixed the number of councillors as eight, and have constituted the same number of districts in which these officers are severally to be chosen by the people from their own number. 3. The number of Senators has been established as forty, and the commonwealth is divided up into the same number of senatorial districts, determined by the number of legal voters, who shall respectively elect from their

own number the forty senators, thus doing away with the former apportionment to the counties as senatorial districts. By these alterations also have been swept away the original restriction of election as senator to persons having a freehold of three hundred pounds, or personal estate of six hundred pounds in value, and the restriction of eligibility to the house of representatives to persons having a freehold of one hundred pounds, or ratable estate of two hundred pounds. And furthermore, under these amendments, the old provision of property basis for the senate, that is to say, of apportioning to the senatorial districts their respective number of senators according to the proportion of public taxes paid by said districts respectively, disappeared in 1840. The original provision, placing the senate basis on property, was debated in the convention of 1820, with perhaps greater vigor and eloquence than any other question, the late Governor Lincoln being in the lead of the champions on the side of the popular right, and Mr. Webster defending the property side by most elaborate reasoning, aided by Judge Story in mingled argument and declamation, and by many others who shared in the discussion. The old time reasoning, that the Senate was the citadel of property and the House of popular rights, was worked and almost overworked in the discussion, and prevailed with the delegates. Strangely enough, this debate, which was perhaps the ablest of all the debates in that convention of men so eminent, could not now easily be made palpable to the appreciation of a tenth part of the three hundred thousand voters in the commonwealth, and was so far forgotten only twenty years afterwards, that an amendment basing the apportionment of senators upon the simple number of citi-

zens qualified to vote, was accepted by the people as one of the ripe fruits of modern experience. The only state whose constitution contained this, or any similar provision, was New Hampshire, in which, unless annulled within the last four years, it still remains unchanged, but to what extent it is carried out in practice, a stranger may not be presumed to know. 4. These articles have one after another entirely altered the number and apportionment of representatives to the general court, and the last article adopted in 1857, has reduced the house of representatives to two hundred and forty members, and has provided for the apportionment in representative districts, abolishing the system of town or corporation representation, which had existed two hundred and twenty years. No other question in our annals has been so frequently and fully discussed as this, and the debates upon it if compiled would fill many ponderous volumes. Representation by towns was one of the earliest things established in the first days of the colony, and as far back as 1641, this right was registered as the sixty-second fundamental in the constitutional code of the Body of Liberties. The history of the subject illustrates the cumulative force of custom and the difficulty of overcoming traditional practice, even after it has become incongruous and impracticable. If, in the days of Winthrop's administration, any other than the town system of representation had been fixed upon, it may be presumed there might have been a less strenuous adherence to it; but the long enjoyment of the right by the several small and homogeneous communities in the townships endeared it to them as a thing almost sacred. The customs, the *consuetudines* of the Anglo-Saxon race have for six centuries been among the things least sus-

ceptible of change. The method of election by districts, which has now been in use for twenty-four years, may be deemed one of those steps of reform which are rarely reversed, and it is in accord with the principle adopted by all of the states of this union, except the five other states of New England which still adhere substantially to the traditions of the period of the early settlements. 6. By the same group of amendments the secretary, treasurer, auditor, and attorney general, usually termed executive officers on the ticket with the Governor and Lieutenant-Governor, are made annually elective by the whole people from their own number.

By the *fourteenth* amendment, 1855, in the election of all civil officers of the state, provided for by the constitution, the rule of plurality of votes has taken the place of that of a majority. The general degree, not merely of acquiescence but of satisfaction, which has been manifested for twenty-five years under the operation of this provision, adds another to the hundreds of illustrations of the general truth, that whenever in administering government two systems are in question, both artificial or arbitrary as to any fundamental principle, prejudice of attachment to an ancient practice must give way to the convenience of modern communities.

The *eighteenth* amendment, 1855, has made it a part of the organic law of the state, that all moneys raised by taxation in the towns and cities, or appropriated by the legislature, for the support of public schools, shall be applied only to schools which are under the superintendence of the constituted municipal authorities, and shall never be appropriated to schools maintained by any religious sect. I have not

observed that this provision has as yet been adopted by any other state. Its acceptance by the people of Massachusetts twenty-five years ago, has given a conclusion in advance to questions of which the agitation has since threatened to spring up out of tendencies which have rapidly made headway toward the establishment of parochial and denominational schools. The authorship of this article belongs to the late Chief Justice Joel Parker, who was its mover and foremost advocate, aided by the late Vice-President Wilson, in the convention of 1853; and although it was rejected by the people, in that year, as an integral part of the general body of amendments which were framed amid the excitement of party politics, it was promptly taken up by the next legislature and easily passed through all the constitutional stages.

The *nineteenth* article of amendment, 1855, has transferred from the chief executive of the commonwealth to the people of the counties and districts, the selection of sheriffs, probate registers, clerks of the courts, and district attorneys, annulling a principle which had been in existence since the foundation of the government. The same thing was attempted in the convention of 1820, and was summarily voted down. The sound and solid reasons against this proposition are too obvious, and have been too frequently elucidated in discussion, to warrant their present repetition. The history of its adoption is the history of the mingling of a constitutional question of enduring importance with an ephemeral question of party expediency. It had been carried through the constitutional convention of 1853 by one political party, and after its rejection by the people it was taken up by another party on its return to

power and adopted as one of the conditions of appeasing its opponents, and of its own continuance in power. It was an unseaman-like instance of throwing a tub to the whale, after the whale had disappeared in far water. It was a propitiatory offering by a noble party in the weakness of its last days, sacrificing an elemental principle of the constitution, but bringing not even the expected advantage to its authors; for in the same year the party itself took its departure from American politics. I have heard judges say,—judges, the mention of whose names awakens respect and confidence over the commonwealth,—that the practice under this new system has indicated a degeneracy from the better condition under the old system. Attempts have since been made to restore the ancient constitutional method, and may it not be hoped the people of Massachusetts will yet return to it?

The *eleventh* amendment is that of the third article of the Bill of Rights, the only instance in which those Rights have been touched by the hand of change in the entire century. The original third article is the only one in the Declaration of which John Adams was not the author, but he had the credit of it, at least to some extent, in other parts of the United States. In the recently published Warren letters, already mentioned, written in 1807, he himself gives a curious account of an interview with him, sought by the pastor of a German church in a town of Pennsylvania, while on his last journey to Washington, pending his second candidacy for the presidency; during which the minister made known that there was a general belief in that section that Mr. Adams had influence enough in making the Massachusetts constitution to establish here the Presbyterian [Congregational] religion and make all other sects of

christians pay taxes for the support of it; and Mr. Adams states that this report "had an immense effect" among many religious sects, "and turned them in such numbers as decided the [fourth presidential] election." This memorable third article was so unlike anything contained in the constitutions of most of the other states, and so strongly in contrast with the aim and scope of religious thought after the Revolution, that it awakened general attention and criticism outside of New England. The precise posture, both towards the past and future, of public opinion on this question within this commonwealth, was justly stated in a letter of Dr. Franklin, written to Richard Price in October, 1780, immediately after the ratification of this instrument:

"Though the people of Massachusetts have not in their new constitution kept quite clear of religious tests, yet, if we consider what that people were a hundred years ago, we must allow they have gone great lengths in liberality of sentiment on religious subjects; and we may look for greater degrees of perfection, when their constitution, some years hence, shall be revised."

A similar forecast of subsequent experience was made on the other side of the ocean by Dr. Paley. My attention to the following passage from his Political Philosophy, published in 1785, has been drawn by the very instructive discourse upon the centenary of the constitution, delivered in January, 1880, by the Reverend Dr. Edward E. Hale:

"The only plan which seems to render the legal maintenance of a clergy practicable, without the legal preference of one sect of christians to others, is that of an experiment which is said to be attempted or designed in some of the new states of North America. In this scheme, it is not left

to the option of the subject whether he will contribute, or how much he shall contribute, to the maintenance of a christian ministry: it is only referred to his choice to determine by what sect his contribution shall be received. . . . The above arrangement is undoubtedly the best that has been proposed upon this principle: it bears the appearance of liberality and justice; it may contain some solid advantages; nevertheless, it labors under inconveniences which will be found, I think, upon trial, to overbalance all its recommendations."

This article made it the right and the duty of the legislature to require of the people support of public worship and of religious teachers by compulsory taxation, and to enjoin attendance on divine worship. The address of the convention of 1780, recommending to the people the result of its labors, which has been said to have been written by Samuel Adams, states that this article was passed with more than common unanimity; but a large vote was returned against it, and pending the question of the ratification, it encountered the general opposition of the citizens of Boston, who assembled in Faneuil Hall and adopted hostile resolutions with almost unanimous consent. The proposition was the natural product of the blending of the civil and ecclesiastical functions of the state under the puritan régime in the formative period. As early as 1638, a law subjecting to "assessment and distress" all who should not voluntarily support the ordinances in the churches; a similar act in 1654, when the colony had become large; in 1693, when under the new charter there were upwards of eighty churches, an act requiring every town to support a Congregational minister, and assessing therefor all inhabitants of whatever society relations; these may be singled out among

the many instances of the stern policy which continued, at times somewhat relaxing, into the latter half of the last century. The reactionary sentiment relating to this subject, which sprung up about the time of the Revolution, was not sufficient to prevent the adoption of the third article, but large and increasing numbers became at once restive under its operation. The opposition to it afterwards grew more intensive by reason of great changes in the number and mutual relations of christian sects and parishes, to which judicial decisions added further elements of public dissatisfaction. The convention of 1820 contended with these difficulties through long and grave deliberations, and after exhaustive discussion proposed a modification, which proved unsatisfactory to the people and failed of ratification. The agitation of the question was resumed and continued until the year 1833, when the present amendment was adopted. Of the many legislative reports upon the subject, the last was made in the Senate by Mr. Samuel Hoar, in 1833, who stated that "as the alteration would liberate the citizens from liability to compulsory taxation for the support of public worship, in the existing state of the ecclesiastical societies in the commonwealth" it was expedient it should pass. The experience of almost fifty years under the change has been accompanied by general content with its provisions; and all that now remains of the famous third article, upon which volumes have been written and spoken, is comprised in the three simple propositions, (1) religious equality to all denominations, (2) the right of every religious society to raise money for its expenses, and (3) the right of every person to be exempt from sharing in the expense unless he voluntarily enrolls himself as a member.

The prediction of Dr. Franklin has been fulfilled, and the principle of absolute religious liberty, sometimes called the freedom of the mind, sometimes called "soul-liberty," traced by some to the philosophy of Descartes, adopted as a political policy by Roger Williams in Rhode Island before Descartes had published any philosophy, has now been a part of the constitution of Massachusetts nearly half a century.

The only amendment which remains to be mentioned is the *ninth*, which I deem most valuable of all. After 1795, and prior to 1820, there was no provision in the constitution for its revisal. The convention of that year, on the report of Mr. Webster, adopted this article, which provides that any amendment approved by a majority of the Senators and two-thirds of the Represesentatives voting upon it in two successive years, and then being ratified by a majority of the people voting on it, shall become a part of the constitution. And this article was ratified by the people, although it appears that they were so adverse to opening any door for alterations of the organic structure of their government, that nearly one-third of all the votes cast were given against even this well-guarded provision. It was the object of the convention in providing this method for possible changes in the constitution, to forestall any necessity for calling conventions, and to discourage a practice, since not uncommon in some of the states, of educating the people in the exercise of constitution-making. The admirable success of this provision is shown by the fact that of the whole number of amendments made in the last sixty years, all but the nine which were initiated by the convention of 1820, that is to say, eighteen of the twenty-seven, have come to

us in the manner thus provided. The greater safety of this method over that of conventions made easy and frequent, is obvious to reason, and it received the signal approval of the people themselves in 1853, when they rejected the whole catalogue of amendments offered to them by the convention of that year, including six which only two years later they ratified when coming to them through the stages pointed out by the convention of 1820. It may now be regarded the settled conviction of the people of Massachusetts that they prefer to obtain amendments of their government in the more slow, more calm, more conservative manner herein indicated. The convention of 1853 offered to the citizens of the state a policy of such frequent conventions for constitutional revisal that now, after subsidence of the excitement of that day, it may fairly be pronounced unprecedented and grotesque. The folly of its proposed treatment of a supposed chronic distemper in the body politic, only from the dispensary of frequent and periodical constitutional conventions, was graphically exposed by Dr. J. G. Palfrey, in his clear and analytical address to the people. "Florence, [said Dr. Palfrey], before her frolics of this kind were brought to an end by the Grand Ducal despotism, had at one time, if I remember aright, five constitutions in ten years. It was not the way to a quiet life."

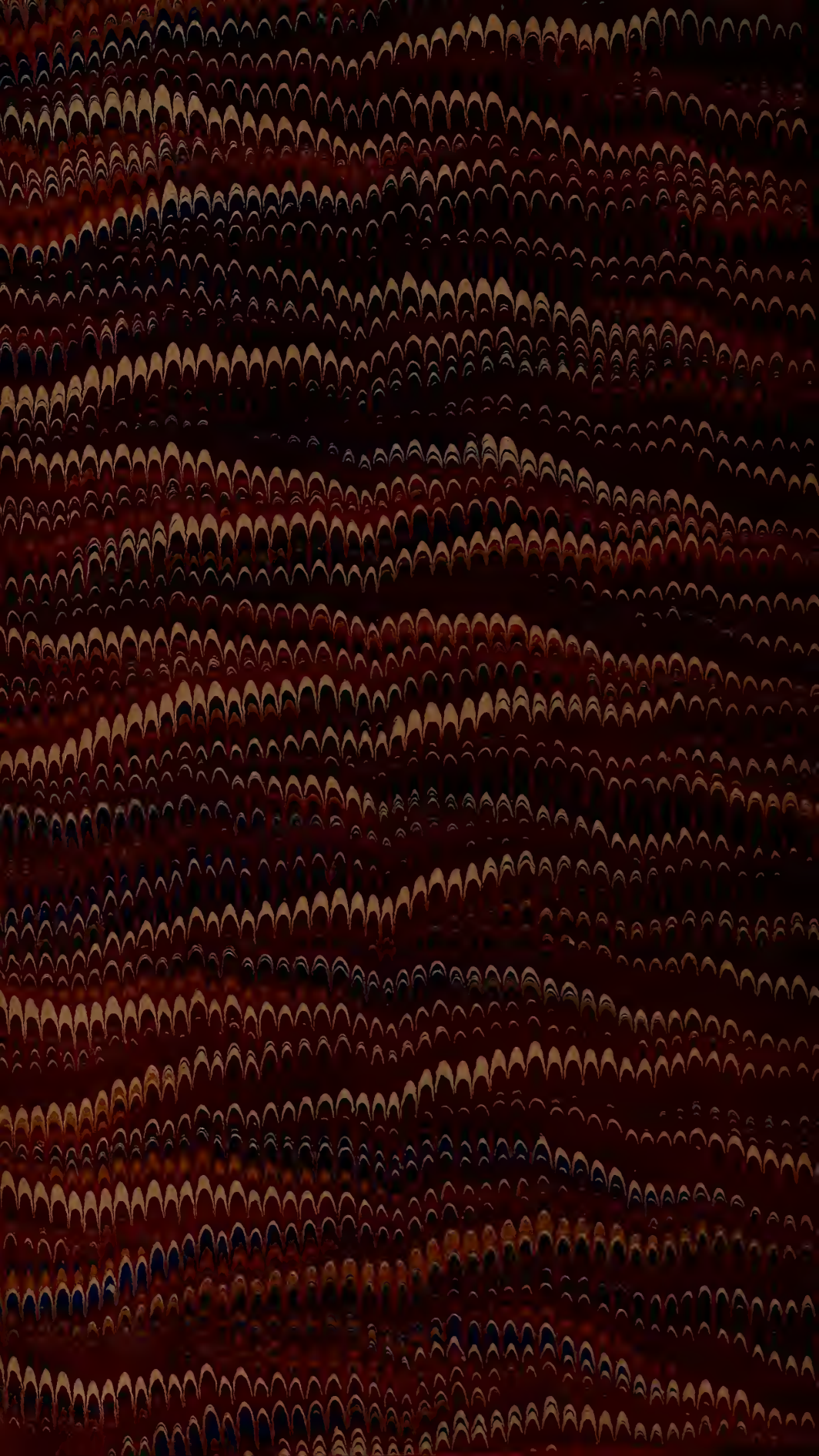
An analysis of the several amendments accepted in the last sixty years, discloses that we live under the same substantive form of government which was established one hundred years ago. But five of all the amendments have introduced any new subject matter in the constitution: all the rest of them have been modifications: some of them repealing others; many of them susceptible of being grouped

under a single head as affecting the machinery of the election of the executive and legislative officers; a portion of them merely formal; and only a small part of the whole number touching any elementary principle of the government. Since the establishment of this constitution, the population of the commonwealth has more than quintupled, and there has been more than a corresponding advance in its aggregated wealth, and in the diffusion of competence and comfort among its subjects. With rare exceptions, the generations have carried out in good faith the intent of the framers. Under the high and inspiring tone which they transfused into the constitution there has been, there is now, constant advancement on every field of "literature and the sciences, of humanity and general benevolence, of public and private charity," of legislation, of judicial interpretation, and impartial administration of the laws. The later change of the homogeneousness of our population by the admixture of races, imposes upon men of education and authority, a constantly increasing duty to impress upon the people the value of this constitution, and the importance of protecting it from every unnecessary alteration. And upon no body of men does this duty rest with higher responsibility than upon the Historical Societies of Massachusetts, in the archives of which the names and the fame of its authors are treasured and guarded.

There is no technical science of government, and there can be none. The history of free nations has illustrated the truth that governments are growths, springing from necessities and conveniences suggested by experience; and they approximate to the highest dictates of reason, according to the growth of communities in intelligence and virtue.

The principles essential for the groundwork of government for a free and virtuous commonwealth are few and elementary, and the world has never beheld them so well applied, or so happily illustrated, as in the governments of the states of this union. Of all these states, I may be pardoned for selecting Massachusetts as a type for the sound principles embodied in the foundations, and for a steadfast adherence to them through a hundred years. And yet, how simple the essential parts of all this frame-work are, has been well stated by John Adams, the framer-in-chief:

"Representations, instead of collections, of the people; a total separation of the executive from the legislative power, and of the judicial from both: and a balance in the legislature, by three independent, eqnal branches; are perhaps the three only discoveries in the constitntion of a free government, since the institution of Lycurgus. Even these have been so unfortnnate that they have never spread: the first has been given up by all the nations, excepting one, who had once adopted it: and the other two, reduced to practice, if not invented, by the English nation, have never been imitated by any other except their own descendants in America."



LIBRARY OF CONGRESS
0 029 827 410 3

LIBRARY OF CONGRESS
0 029 827 410 3